

Judge JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	NO. CR 09-402 RAJ
Plaintiff,)	
v.)	DEFENDANT ASHMORE'S
)	SENTENCING
MARK ASHMORE,)	MEMORANDUM
<u>Defendant</u>)	

The defendant, Mark Ashmore, through counsel, Terrence Kellogg, submits the following sentencing memorandum to assist the court in determining the appropriate sentence to be imposed in this matter.

Objections to PSR:

The defense has objected to the presentence report [PSR] calculation of the reference guideline range and other matters set forth in the final PSR.

Ashmore submits the correct sentencing guideline range is based upon an adjusted offense level of 23 and a criminal history category of I, resulting in a guideline range of from 46 to 57 months confinement.

The primary difference between probation and the defense in

1
2 determination of the adjusted offense level is Ashmore's position that the loss is
3 limited within the scope of the conspiracy of count 1, as well as the three
4 substantive counts, to less than \$2.5 million. Under USSG § 2B1.1 the base offense
5 level of 7 would be increased by 16 levels. Probation used a loss in excess of \$7
6 million with additional enhancements for more than 10 victims (+2) and an
7 additional enhancement for being an organizer or leader in the offense (+2)
8 under USSG 3B1.1 (c). See PSR at page 10.
9

10 The defense is not yet aware of the government's position concerning
11 sentencing or application of the guidelines.

12 In addition to the restitution hearing scheduled to immediately follow the
13 sentencing it is anticipated the government will present evidence to resolve the
14 defense objection as to the amount of loss for which Ashmore is to held liable
15 under application of the guidelines.

16 **Defense Recommendation:**

17 The court is asked to impose a sentence of 36 months confinement followed
18 by a 5 year term of supervised release with appropriate conditions.
19

20 **Basis for Recommendation:**

21 The recommendation above is consistent with the sentences imposed on
22 others in this case, given their acceptance of responsibility, cooperation with the
23 government, and role in the offense. This sentence is more than twice the
24 sentence given Nguyen and Reimer as well as more than four times the term of
25 confinement imposed on DiCugno.

26 The sentence suggested by the defense is also consistent with the sentences
27

1
2 imposed in other similar cases before this court and in this district.

3 The court is asked to impose restitution in the amount \$249,869 for the
4 reasons set forth in Ashmore's memorandum on loss and restitution.

5 **Conclusion:**

6 The sentence suggested by the defense is appropriate in light of the
7 sentencing guidelines and in consideration of the 18 USC § 3553(a) factors
8 guiding sentencing determinations.
9

10 Supervised release conditions, the fact of conviction, and Ashmore's own
11 learning from this experience all indicate the sentence recommended by the
12 defense is sufficient but not more than necessary to meet all of the sentencing
13 factors and goals of the federal criminal justice system.
14

15 Dated this 25th of March, 2011, at Seattle, Washington.
16

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CERTIFICATE OF SERVICE

Terrence Kellogg does hereby certify that on the 25th of March, 2011 he caused the document set forth above to be served on all counsel of record by filing the same with the Western District of Washington ECF system.

s/ Terrence Kellogg
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